FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	**GN Docket No. 93-252**
FURTHER NOTICE OF PROPOSED RULE MAKING	)	
	)	
	)	
Regulatory Treatment of Mobile Services	)	

To the Commission:

MOTION FOR ACCEPTANCE OF THE AMENDED COMMENTS OF RUSS MILLER RENTAL

Russ Miller Rental hereby respectfully requests the Commission to accept its Amended Comments in the above-captioned proceeding. The Commissions Further Notice of Proposed Rule Making requested interested parties to file comments in this proceeding on or before June 20, 1994. Russ Miler Rental did comply with this. However, due to the short time frame to respond and unavoidable delays in obtaining a copy of the FNPR it was only able to submit incomplete comments.

Russ Miller Rental submits that acceptance of its Amended Comments is warranted as it addresses specific matters of substantial importance that relate directly to the public interest determinations the Commission must make as it provides a transition to a new regulatory scheme applicable to mobile communications services. The acceptance of Russ Miller Rental's Amended Comments are in the public interest because, as noted in the Comments, Russ Miller Rental is one of many small SMR operators who's ability to

provide service to the public will be directly affected by this proceeding, as will the services the public receives.

Respectfully submitted,

Russ Miller Rental

By: William R. Miller

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3620 Byers Avenue
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June 23, 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
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Date: June 23, 1994

I. INTRODUCTION

1. Russ Miller Rental is a small SMR operator in the Dallas/Fort Worth, Texas market. We operate nine 800 megahertz trunked channels in Fort Worth, five in Sherman, five in Bowie, and five in Stephenville, Texas. In addition, we operate a conventional channel in Mineral Wells and Peoria, Texas. Until it was sold in May of this year we also operated a 10 channel 900 megahertz trunked SMR system in Cincinnati, Ohio. We have been in the two way radio business since 1972 and the SMR business since 1984. We are members of both AMTA and NABER. Mr. Miller is also a member of the Radio Club of America.

II. GENERAL

2. Russ Miller Rental has reviewed the Further Notice of Proposed Rule Making by the Commission, proposing regulatory treatment of mobile services on GN Docket 93-252. It is our belief that not enough time has been allowed for comments on this matter which is of such a wide scope and serious nature that it will re-chart the course of the entire wireless mobile communications industry for the next several decades. Nevertheless we have prepared our comments to the best of our ability given the short time allotted, although we would have preferred to address some of these issues much more in depth.

III. SUMMARY

3. We have held in depth discussions on the proposed rule changes with our attorneys as well as other small SMR operators which are our peers. We have reached a consensus amongst ourselves and believe we are able to constructively comment on this Further Notice of Proposed Rule Making.

4. We generally support the changes and tentative conclusions proposed by the Commission and feel that a lot of thought has gone into the new proposed rules. In particular we feel that the Commission's discussion of the issues shows great insight into the issues addressed and the various alternative scenarios presented. We do, however find

there are a number of issues which we believe will have an undesired impact on the various services affected by them and offer suggestions accordingly.

5. We also generally support the positions of AMTA on these matters. Where we differ with either the Commission's or AMTA's positions, we address those issues specifically, otherwise we remain silent, except where we feel the need to reinforce the Commission's or AMTA's views.

IV. CONGRESSIONAL OBJECTIVE

6. The Commission notes that a principal objective of Congress in revising Section 332 was to benefit consumers by promoting competition in the mobile services marketplace. Congress created CMRS as a new classification of mobile services to ensure that similar mobile services are accorded similar regulatory treatment. Consistent with that objective, the Commission's role is to establish a regulatory regime under which the marketplace -- and not the regulatory arena -- shapes the development and delivery of mobile services to meet the demands and needs of consumers. Reliance on market forces will ensure that the most efficient service providers prevail. This will create incentives for firms to offer innovative and improved services at the lowest possible costs, and will insure that investment decisions are driven by consumer demands rather than regulations.[1]

7. We strongly believe this philosophy is what Congress intended and wish to emphasize that we believe it is paramount to test all proposed rules against this fundamental idea.

V. 800 MHz SMR SERVICE

A. Substantial Similarity

8. We agree with the Commission and AMTA in their determinations of substantially similar services and believe the analogy used is sound. Both AMTA and the Commission correctly note, however that there is a difference in wide area digital ESMR service and traditional SMR service. Wide area digital ESMR closely approximates

[1] FNPR par. 12

cellular service, with a large number of channels and wide area coverage. There are currently two classes of ESMRs; Those with low power, low towers and frequency re-use and those with high power, high towers and limited frequency re-use. The former are used in primarily urban areas and the latter are more suitable for rural areas with low population density. As subscriber loading increases both types of ESMR systems will gradually reduce the coverage area of their sites and add additional sites within their defined operating area to reap more capacity from frequency re-use in much the same way as cellular did during its evolution. The traditional analog SMR usually offers primarily dispatch type service with limited interconnect and other than its trunking and privacy features is more akin to Part 90 community repeater operation.

9. Traditional SMR also has the capability to provide the same cellular like features (on a limited capacity basis) as wide-area digital ESMR with conversion to digital technology and incorporation of wide-area filings or in cooperation with other traditional SMRs. This is how wide-area digital ESMR evolved with the help of consolidators. While there are still opportunities for conversion of traditional analog SMRs to wide area digital ESMRs,[2] in most areas of the country spectrum is already exhausted and/or consolidated and not available for assignment.

B. Technical and Operational Rules

1. Traditional SMR

10. Traditional SMRs generally operate a limited number of frequencies at any particular site, although they may have multiple sites in a self defined area which usually fits their subscriber's traffic patterns. Not infrequently a traditional SMR must utilize other traditional SMRs in the area in order to provide the communications range their customers demand. Normally system linking or networking is not used as, until recently, there has not been equipment manufactured which readily lent itself to this function and was available at a reasonable cost.

[2]See par. 1 above.

11. Most urban traditional SMRs are currently loaded with dispatch subscriber units to the point of saturation and as a result offer little or no telephone interconnect. By contrast, most rural SMRs offer primarily telephone interconnect, as there is not usually enough dispatch type customer demand to create enough income to pay for the SMR system. Rural SMRs have been able to effectively establish themselves with telephone interconnect type service as they were operational long before the cellular RSA operators were. Rural SMRs are now feeling competitive pressure from the cellular RSA operators and are seeing a significant erosion of their customer base due to the inexpensive cellular subscriber equipment, higher cellular capacity (less probability of blocking), better quality of interconnection and wider cellular service area.

12. Traditional SMRs are now, and will likely continue to team up with each other in order to be more competitive. This usually involves secondary use by one SMR's subscribers of another SMR's system, normally at some sort of reduced rate or reciprocal usage arrangement between the SMRs.

13. In order to compete effectively with wide-area ESMRs, (which will be offering its customers a combination full duplex phone, dispatch radio, alpha-numeric pager, text messaging and facsimile interface) traditional SMRs must be allowed the regulatory flexibility to migrate to new technologies as they become available, including digital formats such as ESMR. In some cases an urban SMR would be happy to just increase its capacity by converting to digital technology, but faced with significant competition from ESMRs (a traditional SMR is no threat to an ESMR) will need to offer the same enhanced services as ESMRs (although on a much smaller scale) in order to retain its existing subscriber base. To the extent the traditional SMR has, is able to obtain, or form alliances with other SMR operators to mass the necessary frequencies to implement a pseudo-wide-area system, it should be allowed to do so. It is the publicly stated marketing intention of Nextel to address the traditional SMR subscribers first when

loading its ESMR systems. In order to protect the traditional operators, they need to be given the ability to compete with ESMR operators.

2. Technical Rules

14. We see no need to change the power and antenna height, emission masks, bandwidth or frequency stability rules. In the SMR service there is a vast installed and mature subscriber base which is accustomed to the system range and coverage areas they currently enjoy and a great deal of turmoil would ensue if these parameters were changed.

3. Channel Assignment and Service Area

15. SMR licensees are currently assigned spectrum in five channel blocks for trunked systems and one channel at a time for conventional systems. Licensees can accumulate additional spectrum upon demonstration of adequate system loading, subject to channel availability. In virtually all areas of the country, except the most sparsely populated areas, no channels are available. As a result, consolidation of SMR operators has occurred. This consolidation has led to the current ESMR technology and wide-area ESMR systems.

16. This consolidation process has resulted in ESMR systems with self defined service areas based upon population densities and marketing plans. It has also resulted in non-contiguous spectrum holdings by the ESMR operators (although they had the opportunity to acquire considerable contiguous spectrum when making their acquisitions), unlike cellular and PCS which have contiguous spectrum and are regulated to defined service areas, such as MSAs, RSAs, MTAs and BTAs. However, the ESMR equipment is frequency agile and does not require contiguous spectrum. This creates a problem for the ESMR operator and the Commission in defining service areas and modifying base station locations within the service areas.

17. We see this as a minor problem which can be left to the market forces to sort out as these systems mature. The market forces have to date worked extremely well in allowing the ESMR operators to consolidate channels in their areas of interest. Most

wide-area ESMR filings contain all of the frequencies (justified by aggregate loading) that an ESMR operator either owns or manages within its self-defined service area at every site where they can be located, taking into account co-channel holdings by other SMR or ESMR operators. We propose that the Commission allow ESMR operators to add stations or relocate their stations within the operator's self defined service area as minor modifications, much like Part 22 fill in stations and immediately begin operations), so long as the relocations do not extend the service area or encroach upon other licensee's 70 mile co-channel protection (or other existing short-spaced protection).

18. We are already seeing channel trading among ESMR licensees where a smaller operator in an area will trade its channels in that area to a larger operator in the same area, who happens to hold channels in another area where the roles are reversed. In addition, further consolidation is occurring (some of it between ESMR operators) as ESMR operators seek to enhance their positions in their markets. We do not believe that ESMR operators should be afforded contiguous spectrum by regulation. If an ESMR operator desires contiguous spectrum over its service area, then it should turn to the marketplace to accomplish that.

19. The 800 MHz frequency band has, in most areas, matured to a viable combination of dispatch and interconnect service offerings. There is already a very large installed customer base operating on these frequencies. A significant amount of the current subscriber equipment in service is not capable of operation on all frequencies in the 800 MHz band (only 861 - 866 MHz) and would have to be replaced if contiguous spectrum were allocated for ESMR use only. It is our opinion that the disruption of service to subscribers and resultant loss of productivity due to loss of man hours that would result from any re-allocation of these frequencies to achieve a contiguous spectrum assignment negates any benefits that would be derived from doing so. At some point in the future we foresee most of the entire 15 MHz of the 800 MHz frequency band being used for some type of digital ESMR-like service. The increased capacity that will be gained, coupled with

the user convenience of having a single, do-all widget type of communications device that would replace the current multitude of devices now being used will create a considerably greater demand and public awareness of mobile communications, which in turn will increase productivity for that much larger base of users.

a. Licensing Procedures

20. Licensing in the heretofore private 800 MHz services should, to the extent practical, allow for the standard Part 22 public notice period and the petition to deny procedures in order to prevent abuses of the system and ensure that the licensees are of such character that they are eligible for a license. However, petitions to deny should not be allowed for frivolous purposes, such as increased competition to the petitioner, especially when considering paragraph 6 above. We believe that the 800 MHz spectrum is currently used to the extent that windows to file competing applications will not serve the public interest and will only delay the delivery of services to the public. At this stage of development in the 800 MHz band, it does not increase competition as there is not enough unlicensed 800 MHz spectrum available to create new viable competitors. Perhaps the Commission should consider whether in today's information based society the above requirements are obsolete in their present format, as relatively current data is available at a very reasonable cost through the FCC's database contractor and other sources. Since this data is available to all interested parties at the same time, should the Commission consider this as constituting public notice, allowing applications to be processed contemporaneously, thereby increasing the speed at which service is provided to the public? There would still be time for petitions to deny until 30 days after an authorization is granted. Insofar as competing applications are concerned, the database allows queries of frequencies utilized in user defined areas. Many people currently use this method to identify available frequencies and file applications. Thus by manipulation of this data, available frequencies can easily be derived. This allows "equal access" for all interested parties, so that anyone who has a need for a particular frequency in a particular area has

the same ability to apply for it on an equal basis as anyone else. If the Commission considers all applications received on a particular day to be treated as mutually exclusive, then competing applications are also accommodated. This procedure would eliminate the filing of competing applications for strictly anti-competitive purposes (i.e., greenmail from watching public notices) and assure that all applicants presumably have a need for a frequency in a particular area since they went to the trouble to do database research before filing.

21. To deter speculators and reduce the number of applications generated from the boiler room license mill operators of "get rich quick" infomercial fame, we propose a "Disclosure Rule." Any person preparing a license application who is not the actual applicant shall be required to disclose to the applicant (either on a separate FCC approved form or, for electronic filing purposes, incorporated into the proposed form 600) the actual procedures, and (fill-in-the-blank) costs for each, in obtaining an FCC license in the various services desired. Also included should be a statement that "do-it-yourself" instructions are available from the FCC and frequency coordinators along with telephone numbers for each. There should also be a statement informing the applicant about mutually exclusive applications and the possibility of competitive bidding. This would add only a small burden to the application preparer and it should significantly reduce the number of applications the FCC receives and prevent millions of dollars of consumer fraud. It would not add to the FCC's processing burden at all.

22. We are strongly in favor of elimination of the 40 Mile Rule, but are concerned it will result in certain applicants applying for every unused frequency in the country. We believe that there needs to be some sort of "safety valve" to prevent this. Obviously this is not a concern in any of the urban areas as all channels are already used. A possible channel cap in rural areas which is linked to the population density in any particular area may be appropriate. With the impending influx of surplus SMR base station equipment from digital conversions it is feasible to construct and operate a system at a

very low cost. We fear that this could easily happen and result in spectrum warehousing. As an alternative, perhaps there is merit in FleetCall's Comments to the Commission[3] stating that, as a result of limited demand, it would limit its frequency reuse in those EGA extensions beyond a 100 mile radius to no more than twenty percent of the total ESMR frequencies in the market. We propose that the Commission adopt this, with the modification of twenty percent of the total ESMR frequencies the applicant holds in its market area. If demand is such that this is insufficient spectrum, then the ESMR can make a showing to the Commission justifying its need for additional frequencies.

23. The 220 MHz band is somewhat different from all other CMRS spectrum. There is a limited amount of spectrum in this band and it has already been split into narrow band channels. Full duplex telephone interconnect is not currently technologically feasible, nor is low power, low tower frequency reuse. Thus we anticipate that the 220 MHz band will be used for fleet dispatch operations with very limited interconnect. We are concerned that many licensees are not able to construct and operate their systems within the parameters of their licenses. We understand that the Commission is granting STAs to allow these licensees to construct their systems. We believe that in order to ensure the continuity of service, that the filing window should not be opened to new licensees until existing licensees have had a chance to apply for permanent modifications to their licenses. This band (for non-nationwide channels) is divided into five channel blocks of non-contiguous spectrum. Current rules prohibit licensees from holding more than one five channel license within a 40 mile radius, similar to the 800 MHz Forty Mile Rule. Unlike 800 MHz, there is no provision in the 220 rules for adding additional channels when a licensee's existing five channel block becomes loaded. Due to the poor trunking efficiency of five channels the capacity of a stand-alone five channel system is limited to approximately 350 units before unacceptable blocking occurs. We propose to allow limited consolidation of systems in this band (with license transfers allowed after

[3]FleetCall's Comments to the Commission, June 7, 1990, LMK-90036.

construction) to promote healthy competition and encourage expedient service to the public. We propose to allow the non-nationwide frequencies in this band to be consolidated on a regional (local) and multi-regional basis. Perhaps a channel cap of 40 channels per region should be considered, (defining a region as a 120 km radius of one of the licensee's sites, as modified) including QO, QD and QT frequencies. This would allow the flexibility for a licensee to create two twenty channel systems, four ten channel systems or many other combinations. With this licensing scheme a system operator could provide coverage of the regional area and still have reasonable trunking efficiency. We also propose multi-regional systems. In a multi-regional system, we propose to allow a one year extended implementation period for those licensees/system operators with over 200 channels. There should be construction benchmarks with strict enforcement thereof. A minimum of 20 percent of the licensed stations should be constructed by the original December 2, 1994 deadline. Another 30 percent should be constructed by June 2, 1995 and the remaining 50 percent should be constructed by December 2, 1995. We are concerned that some licensees may claim to be a part of a multi-regional system in order to delay their construction deadline. The Commission is encouraged to request some sort of verification of this before granting extended implementation schedules.

24. To the extent not restricted by statute, we believe the Special Temporary Authority procedure should be retained for previously Part 90 services and extended to Part 22 services as well.

25. We believe that all Loading Requirements on 800 and 900 MHz SMRs and ESMRs should be removed, as they no longer serve any useful purpose and only serve to restrict availability of service to the public. We also think that conventional channel loading requirements should be retained to prevent abuses in that area. Loading requirements should also be retained when expanding a trunked system with a conventional channel through inter-category sharing.

26. Automatic cancellation of existing licenses for failure to meet loading should be eliminated. For the most part, only rural area licensees would be affected by this rule. These stations were once in non-wait listed areas and have only recently been affected by this rule, and only then due to the advent of ESMRs and the number of recent applications in rural areas precipitated by the license mill and infomercial people. The subscribers and licensees of these systems should not be penalized for the greed of others.

27. We do not see any reason that would benefit the public if prohibitions on transfers of unconstructed systems in the SMR service were retained, providing that they are part of a wide area system for which the underlying licenses are in place and constructed.

28. Construction periods for all simple trunked and conventional systems should be standardized to one year for ease of administrating. Complex systems, such as wide area ESMR systems should be given five years to construct. These systems require considerable engineering and optimization as well as involve extensive fixed facilities that will have to be installed to link the various sites together. In some areas, delays can be caused by wireline carriers who do not have enough plant capacity to service the ESMR. As an example, while recently constructing a system, I discovered that the local telephone company still operated a step-by-step office and had no more cable capacity. A waiver should not be required as it will only increase the burden on the applicant and will most likely be granted. Some minimum number of constructed underlying channels, such as 40, should be required before an extended construction period is allowed. It is presumed that these channels are already constructed and providing service to the public, so the only delay in bringing services to the public that will be involved will be the addition of enhanced SMR services. Each ESMR operator should have a financial interest in accomplishing this as expeditiously as possible in order to gain an advantage over competing ESMR operators.

29. User eligibility for CMRS providers should be the same as current Part 22 licensees as restrictions on service to foreign governments and their representatives is an occurrence that does not happen often enough to even warrant attention.

30. Station identification rules should be tightened in many cases, not relaxed. We have found, while searching for sources of interference in cases of both intermodulation and spurious emissions, that many times modulation is present on the offending signal. When the frequency of the offending transmitter is not known (many times the case), the station identification of the transmitter is the only way to easily locate the source of the interference. We have found this to be especially true with high power paging transmitters which are usually the source of the problem. This should not be a burden on the licensees as only a few seconds of air time every 30 minutes is involved.

31. Licensing of ESMR systems should be based upon the licensee's defined service area. The 800 MHz band is already mature with a large installed base, and with no available channels in all but the least populated areas of the country. Therefore market forces should define the service area. This seems to be successful as the consolidation from acquisitions has certainly created a robust and competitive market, particularly in the areas of interest to ESMR operators. Over time the market forces will continue to further define service areas. If a mandated geographic area is used to define a market or service area, then there will be forced channel exchanges between ESMR operators. The value of these exchanges will be difficult to determine as there are vast differences in the acquisition prices of these channels when they were acquired as well as their intrinsic value according to location. A channel in Tidewater is not the same as a channel in Death Valley and two channels in Tidewater may not have the same value, as one channel may have a large installed customer base and the other may be empty. In addition, certain ESMR operators required to serve the more under populated areas of an MTA or BTA may not have an interest in serving that portion of their territory which may well be better served

by another ESMR who is more interested in that particular area, possibly for reasons of economy of scale, marketing strategy or adjacent location to its existing coverage areas. A market driven geographic licensing scheme based upon the licensee's self defined geographic service area lends much more flexibility to the ESMR operator's operations and marketing programs. Flexibility is one of the foundations of effective and healthy competition. MTA based geographic service areas are many times larger than cellular MSAs or RSAs, and in fact, even BTAs are in many cases larger than a cellular MSA.

32. We believe that the Waiting Lists are now obsolete. Many of the names on the top of the waiting lists are no longer licensee's wishing to expand their systems as they have been acquired by others. In addition, in most areas, there are only a few reasons why a channel would become subject to recovery and subsequent issuance to a waiting list applicant. These are for not meeting loading requirements (which hopefully will be going away) in an area which has recently become wait-listed, failure to renew a license (soon to be ten years), failure to construct or other action by the Commission resulting in revocation of a license. Usually, failure to construct is detected by a Finder's Preference applicant rather than by the Commission.

33. It is our opinion that the Short Spacing rules should be scrapped for traditional SMRs. They have resulted in the filing of greenmail applications by competitors and disruption of service in previously reliable service areas. However, we propose that the current Short Spacing rules be continued between low power, low tower ESMR systems only and only at the edge of their service areas.

34. We believe CMRS Spectrum Caps will not be necessary to promote competition between licensees. To the contrary, we think that more than 40 MHz of CMRS spectrum may be needed to attract enough investment to actually build out and operate these systems. ESMR spectrum should not count towards any cap the Commission might impose, as it is not contiguous and not assigned by uniform geographic areas.

35. We do not believe that channel aggregation limits are necessary in the 800 MHz ESMR arena. There are currently enough players in this area, many of which have overlapping territories, to promote healthy competition. In addition, larger amounts of ESMR spectrum will be required in order for ESMR to effectively compete with cellular and PCS as well as attract investors to construct and operate these systems.

36. Equipment Interoperability Standards are currently required in the cellular arena. This has resulted in universal service and reduced costs of equipment, thereby making service more competitive and available to the public. While this certainly has merit, there is currently only one equipment supplier for ESMR equipment who does not seem inclined to license its technology to other manufacturers. It should be noted that this same manufacturer is also a dominant equipment supplier in many other areas, including cellular.

37. Wireline Carriers should no longer be restricted from holding SMR or ESMR licenses. However, we believe the Commission should delay relaxation of this rule until SMR licensees have had a chance to become familiar with the new rules proposed by this FNPR.

VII. CONCLUSION

38. We believe that both Congress and the Commission are correct in defining and regulating substantially similar services the same. Many of the rule changes proposed in the FNPR are long overdue and will function to increase competition between CMRS operators within and across service specific boundaries. They will also change the face of the entire wireless communications industry from what it is today. We encourage the Commission to proceed with expediency, tempered with caution, in crafting the final rules; always keeping in mind paragraphs 6 and 7 above.

Respectfully submitted,

Russ Miller Rental

June 23, 1994

By: